

## **REMARKS**

In this reissue application, original patent claims 1-15 remain pending. New claims 16-20 were previously added, after which claims 17-20 were cancelled. New claims 21-46 were then added.

Claims 1-16 and 21-46 are pending and stand rejected. Claims 16, 21, 33-34, and 46 are amended by this paper.

The remarks presented herein are in response to the non-final office action mailed September 28, 2009.

### **Double Patenting Rejection**

Claims 1-15 were rejected under 35 USC 101 as claiming the same invention as that of claims 1-15 of US Patent Number RE40,704 (“the ‘704 Patent”). Applicant respectfully traverses.

The ‘704 Patent contains 35 claims, numbered 16-50. Claims 1-15, which originated in the patent that was reissued (US 5,999,977; “the ‘977 Patent”), are enclosed in heavy brackets (“ [ ] ”). As stated in the ‘704 Patent, matter enclosed in heavy brackets appears in the original patent but forms no part of the reissue specification (1:8-10). Thus, claims 1-15 are not part of the ‘704 Patent and cannot be used as the basis of a statutory-type double patenting rejection.

### **Recapture Rejection**

Claims 16 and 21-46 were rejected under 35 USC 251 as being an improper recapture of broadened claimed subject matter. Applicant respectfully traverses in view of the amended claims.

Examiner stated that claims 16 and 21-46 either broadened or omitted the surrendered claim limitation “terminating said broadcast of said data and said multicast communication channel if at least two of said plurality of second endpoints do not transmit said acknowledgment messages containing a positive acknowledgment.”

Examiner stated that this limitation was argued to overcome a rejection in the ‘977 Patent (see page 2 of the Response that was filed December 28, 1998). Examiner stated that, in particular, the Response argued that the claim language “at least two of said plurality of second endpoints” was not shown by the cited references. For example, the Response states that the September 21, 1998, Office Action “does not point to any support from the references for the possibility of at least two, but not all, of the second endpoints failing to transmit acknowledgment messages, whereby the broadcast of data and the multicast communication channel are subsequently terminated” (page 2).

Applicant notes that this argument does not rely on the “containing a positive acknowledgment” portion of the claim language. Thus, this portion of the claim language was not surrendered during prosecution of the ‘977 Patent. As a result, the absence of this portion of the claim language in a reissue claim does not constitute recapture of surrendered subject matter.

#### Claim 16

Claim 16 is amended herein as follows:

In a system wherein a first endpoint is providing data to a plurality of second endpoints each connected by a point-to-point communication channel with said first endpoint, an automatic method for optimizing the transmission of said data to said plurality of second endpoints comprising the following steps:

- a. said first endpoint activating a multicast communication channel having a first multicast address and commencing broadcast of said data over said multicast communication channel;

- b. said first endpoint transmitting a request message to each of said plurality of second endpoints in order to query each of said second endpoints whether they can receive transmissions broadcast to said first multicast address;
- c. certain of said plurality of second endpoints transmitting an acknowledgement message and said first endpoint receiving said acknowledgement message;
- d. for each said acknowledgement message received from said certain of said plurality of second endpoints which indicates that said certain of said plurality of second endpoints can receive transmissions broadcast to said first multicast address, deactivating said point-to-point communication channel with said first endpoint and said certain of said plurality of second endpoints; and
- e. terminating said broadcast of said data and said multicast communication channel if ~~a predetermined condition regarding said acknowledgement messages from said plurality of second endpoints is satisfied; at least two of said plurality of second endpoints do not transmit said acknowledgment messages.~~

As amended, claim 16 recites, in part, “terminating said broadcast of said data and said multicast communication channel if at least two of said plurality of second endpoints do not transmit said acknowledgment messages.”

Claim 16 (as amended) does not include the phrase “containing a positive acknowledgment.” However, as explained above, the absence of this phrase does not constitute recapture of surrendered subject matter.

Therefore, claim 16 (as amended) complies with 35 USC 251.

#### Claim 21

Claim 21 is amended herein as follows:

In a system wherein a first entity and a plurality of second entities in a network are operating in a point-to-point mode, with each of said second entities connected by a point-to-point communication channel with said first entity, an automatic method for optimizing a mode of transmission of data between said plurality of second entities and said first entity, the method comprising the following steps:

- a. said first entity transmitting a request message to said plurality of second entities over a multicast communication channel, said request message being used to initiate transition from said point-to-point mode to a multicast mode;
- b. said first entity receiving from certain of said plurality of second entities an acknowledgement message in response to said request message, said acknowledgement message indicating that each of said certain of said plurality of entities was able to receive said request message; ~~and~~
- c. for each said acknowledgement message received from said certain of said plurality of second entities which indicates that said certain of said plurality of

- second entities can receive said request message, deactivating said point-to-point communication channel between said first entity and said certain of said plurality of second entities[. ]; and
- d. terminating said multicast communication channel if at least two of said plurality of second entities do not transmit said acknowledgment messages.

As amended, claim 21 recites, in part, “terminating said multicast communication channel if at least two of said plurality of second entities do not transmit said acknowledgment messages.”

Claim 21 (as amended) does not include the phrase “containing a positive acknowledgment.” However, as explained above, the absence of this phrase does not constitute recapture of surrendered subject matter.

Claim 21 (as amended) also omits the phrase “said broadcast of said data and” and, therefore, does not recite “terminating said broadcast of said data.” Since claim 21 does not recite any broadcast of any data, it would make no sense for claim 21 to recite terminating broadcast of data. Thus, the absence of this phrase does not constitute recapture of surrendered subject matter.

Therefore, claim 21 (as amended) complies with 35 USC 251.

### Claim 33

Claim 33 is amended herein as follows:

An apparatus for optimizing a mode of transmission of data between a first entity and a plurality of second entities in a network, said network capable of operating in a point-to-point mode, with each of said second entities connected by a point-to-point communication channel with said first entity, the apparatus comprising:

- a. a first apparatus configured to transmit a request message to said plurality of second entities over a multicast communication channel, said request message being used to initiate transition from said point-to-point mode to a multicast mode;
- b. a second apparatus in data communication with said first apparatus and configured to receive from certain of said plurality of second entities an acknowledgment message in response to said request message, said acknowledgement message indicating that each of said certain of plurality of second entities was able to receive said request message; ~~and~~

- c. a third apparatus in data communication with said second apparatus and configured so that, for each said acknowledgment message received from said certain of said plurality of second entities which indicates that said certain of said plurality of second entities can receive said request message, said point-to-point communication channel between said first entity and said certain of said plurality of second entities is deactivated[.]; and
- d. a fourth apparatus in data communication with said third apparatus and configured so that, if at least two of said plurality of second entities do not transmit said acknowledgment messages, said multicast communication channel is terminated.

As amended, claim 33 recites, in part, “a fourth apparatus in data communication with said third apparatus and configured so that, if at least two of said plurality of second entities do not transmit said acknowledgment messages, said multicast communication channel is terminated.”

Claim 33 (as amended) does not include the phrase “containing a positive acknowledgment.” However, as explained above, the absence of this phrase does not constitute recapture of surrendered subject matter.

Claim 33 (as amended) also omits the phrase “said broadcast of said data and” and, therefore, does not recite “said broadcast of said data is terminated.” Since claim 33 does not recite any broadcast of any data, it would make no sense for claim 33 to recite terminating broadcast of data. Thus, the absence of this phrase does not constitute recapture of surrendered subject matter.

Therefore, claim 33 (as amended) complies with 35 USC 251.

#### Claim 34

Claim 34 is amended herein as follows:

In a system wherein a first entity and a plurality of second entities in a network are operating in a point-to-point mode, with each of said second entities connected by a point-to-point communication channel with said first entity, an automatic method for changing a mode of transmission of data between said plurality of second entities and said first entity, the method comprising the following steps:

- a. said first entity transmitting a request message to said plurality of second entities over a multicast communication channel, said request message being used to initiate transition from said point-to-point mode to a multicast mode;
- b. said first entity receiving from certain of said plurality of second entities an acknowledgment message in response to said request message, said acknowledgment message indicating that each of said certain of said plurality of entities was able to receive said request message; ~~and~~
- c. for each said acknowledgment message received from said certain of said plurality of second entities which indicates that said certain of said plurality of second entities can receive said request message, transitioning communications between said first entity and said certain of said plurality of second entities from said point-to-point mode to said multicast mode[.]; and
- d. terminating said multicast communication channel if at least two of said plurality of second entities do not transmit said acknowledgment messages.

As amended, claim 34 recites, in part, “terminating said multicast communication channel if at least two of said plurality of second entities do not transmit said acknowledgment messages.”

Claim 34 (as amended) does not include the phrase “containing a positive acknowledgment.” However, as explained above, the absence of this phrase does not constitute recapture of surrendered subject matter.

Claim 34 (as amended) also omits the phrase “said broadcast of said data and” and, therefore, does not recite “terminating said broadcast of said data.” Since claim 34 does not recite any broadcast of any data, it would make no sense for claim 34 to recite terminating broadcast of data. Thus, the absence of this phrase does not constitute recapture of surrendered subject matter.

Therefore, claim 34 (as amended) complies with 35 USC 251.

#### Claim 46

Claim 46 is amended herein as follows:

An apparatus for automatically changing a mode of transmission of data between a first entity and a plurality of second entities in a network, said network being capable of operating in a point-to-point mode, with each of said second entities connected by a point-to-point communication channel with said first entity, the apparatus comprising:

- a. a first apparatus configured to transmit a request message to said plurality of second entities over a multicast communication channel, said request message being used to initiate transition from said point-to-point mode to a multicast mode;
- b. a second apparatus in data communication with said first apparatus and configured to receive from certain of said plurality of second entities an acknowledgment message in response to said request message, said acknowledgement message indicating that each of said certain of said plurality of entities was able to receive said request message; ~~and~~
- c. a third apparatus in data communication with said second apparatus and configured to, for each said acknowledgment message received from said certain of said plurality of second entities which indicates that said certain of said plurality of second entities can receive said request message, transition communications between said first entity and said certain of said plurality of second entities from said point-to-point mode to said multicast mode[.]; ~~and~~
- d. a fourth apparatus in data communication with said third apparatus and configured to, if at least two of said plurality of second endpoints do not transmit said acknowledgment messages, terminate said multicast communication channel.

As amended, claim 46 recites, in part, “a fourth apparatus in data communication with said third apparatus and configured to, if at least two of said plurality of second endpoints do not transmit said acknowledgment messages, terminate said multicast communication channel.”

Claim 46 (as amended) does not include the phrase “containing a positive acknowledgment.” However, as explained above, the absence of this phrase does not constitute recapture of surrendered subject matter.

Claim 46 (as amended) also omits the phrase “said broadcast of said data and” and, therefore, does not recite “terminate said broadcast of said data.” Since claim 46 does not recite any broadcast of any data, it would make no sense for claim 46 to recite terminating broadcast of data. Thus, the absence of this phrase does not constitute recapture of surrendered subject matter.

Therefore, claim 46 (as amended) complies with 35 USC 251.

Examiner is invited to contact the undersigned in order to advance the prosecution of this application.

Respectfully submitted,  
Guy G. Riddle

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By: /Sabra-Anne R. Truesdale/  
Sabra-Anne R. Truesdale  
Reg. No. 55,687  
Fenwick & West LLP  
801 California Street  
Mountain View, CA 94306  
Phone (650) 335-7187  
Fax (650) 938-5200